

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

BARBARA CAIN

PLAINTIFF

vs.

Civil Action No. 1:93cv370-D-D

AMERICAN TRADING
AND PRODUCTION CORPORATION

DEFENDANT

MEMORANDUM OPINION

This matter is before this court on the motion of the defendant American Trading and Production Corporation for an entry of judgment as a matter of law in its favor. Finding that there exist genuine issues of material fact and that the defendants are not entitled to a judgment as a matter of law, the motion will be denied.

FACTUAL SUMMARY¹

The plaintiff Barbara Cain began her employment with the defendant at some point in 1984. Her work was apparently exemplary up until the latter part of 1992, as reflected by performance evaluations conducted within the company. On October 10, 1992 the plaintiff attended a "Motivation Camp" sponsored by the defendant for the benefit of its employees. While at this function, the plaintiff attempted to climb a scaffold along with other supervisory and management personnel. While so climbing, the

¹ While considering the motion pending before this court, all reasonable inferences must be considered in the light most favorable to the plaintiff. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992). Therefore, the facts of this case are so contemplated by this court.

plaintiff fell and suffered injury. The plaintiff returned to work after treatment for her injuries, but her mobility was restricted by virtue of her need to use crutches.² After the plaintiff's return to work, her performance evaluations were less than glowing. In March of 1993, the plaintiff's employment with the defendant was terminated, and the defendant attributed her termination to a company-wide restructuring. The plaintiff asserts that the termination was motivated by her post-injury physical condition and has instituted this lawsuit under the auspices of the Americans With Disabilities Act (hereinafter "ADA"), 42 U.S.C. § 12101.

DISCUSSION

I. STANDARD FOR ENTRY OF JUDGMENT AS A MATTER OF LAW

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). After a proper motion for

² While it is undisputed that the plaintiff was restricted to crutches at the time she first returned to work, the extent of her ability to walk without restriction after that time appears to be a point of contention between the parties.

summary judgment is made, the non-movant must set forth specific facts showing that there is a genuine issue for trial. Hanks v. Transcontinental Gas Pipe Line Corp., 953 F.2d 996, 997 (5th Cir. 1992). If the non-movant sets forth specific facts in support of allegations essential to his claim, a genuine issue is presented. Celotex, 477 U.S. at 327, 106 S.Ct. at 2554. "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. and Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the non-moving party. King v. Chide, 974 F.2d 653, 656 (5th Cir. 1992).

II. THE AMERICANS WITH DISABILITIES ACT

The plaintiff in the case at hand has asserted her claim under the ADA. The ADA prohibits employers from "discriminat[ing] against a qualified individual with a disability because of the disability." 42 U.S.C. § 12112(a). Interpretation and precedent relevant to the Rehabilitation Act is equally applicable to the ADA. See, e.g., Chandler v. City of Dallas, 2 F.3d 1385, 1391 (5th Cir. 1993). In order to establish a prima facie case under the ADA, the plaintiff must show:

- 1) that she suffers from a "disability";
- 2) that she is a "qualified individual" for the position; and
- 3) that she suffered an adverse employment action

because of her disability.

Stradley v. Lawrence Communications, --- F.Supp. ---, 1994 WL 637723 (E.D. La. 1994) (citing Chandler, 2 F.3d at 1390). For summary judgment purposes, the plaintiff need only present sufficient evidence to create a genuine issue of material fact as to each of these elements. Chandler, 920 F.2d at 314-15.

1. DOES THE PLAINTIFF SUFFER FROM A DISABILITY?

In order to be protected under the Rehabilitation Act, and likewise the ADA, a person need not have a "traditional" handicap. Walker v. Aberdeen-Monroe County Hospital, 838 F.Supp. 285, 288 (N.D. Miss. 1993). A person is considered "disabled" under the ADA if that person:

- 1) has a physical or mental impairment that substantially limits one or more of the major life activities of [the plaintiff];
- 2) has a record of such impairment; or
- 3) is regarded as having such an impairment.

42 U.S.C. § 12102(c). As to the evidence presented to this court, there is nothing to indicate that the plaintiff had a record of impairments for which she asserts that she was fired. However, there is evidence to support a finding that she possessed a physical impairment that substantially limited a major life activity. It is then incumbent upon this court to determine if enough evidence was presented to raise a genuine issue of material fact. Thankfully, the text of the statute is not the only source of direction for this court in determining whether the plaintiff is

"disabled" under the ADA. The United States Supreme Court directs this court to the applicable regulations created for the implementation of the ADA.³ School Board of Nassau Co. v. Arline, 480 U.S. 273, 280, 107 S.Ct. 1123, 1127, 94 L.Ed.2d 307 (1987). A relevant regulation⁴ provides that a "major life activity" is a "function such as caring for one's self, **performing manual tasks, walking**, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i); see Chandler, 2 F.3d at 1390 (quoting 45 C.F.R. § 84.3(j)(2)(ii) (1992) (emphasis added)). The plaintiff has produced evidence that she was unable to travel extensively in the course of her employment due in part to her inability to carry her own luggage. Further, there is also evidence before this court that indicates that the plaintiff's ability to walk has been impaired, which is listed specifically as a "major life activity" in the relevant regulations. The plaintiff has produced evidence from her physician's records that indicate that she is "limited from any prolonged walking, climbing, crawling, jumping or carrying of heavy objects such as anything above 15 lbs."

It must also be noted that the plaintiff has alleged that even

³ But see Coghlan, 851 F.Supp. at 812 (agency interpretative guidelines not binding upon court).

⁴ See 29 C.F.R. § 1630, et. seq. For further discussion of the pertinent regulations, see Robert L. Mullen, *The Americans With Disabilities Act: An Introduction For Lawyers and Judges*, 29 Land & Water L. Rev. 175 (1994).

if she was not sufficiently physically impaired as required under the ADA, then the defendant regarded her as being so impaired. While minimal, the facts reflect that the defendant was aware of the plaintiff's injury, her return to work on crutches, and her complaints concerning her injuries. As well, there is evidence that the plaintiff had a noticeable limp while walking. This is sufficient circumstantial evidence to create a factual question on the issue that would preclude summary judgment. There is sufficient evidence to support a finding that the plaintiff is "disabled" as contemplated under the ADA, and the determination is a question of fact to be determined at trial. See Coghlan v. H.J. Heinz Co., 851 F.Supp. 808, 814 (N.D. Tex. 1994). Summary judgment on this issue would also be inappropriate because the plaintiff has presented circumstantial evidence to support a finding that the defendant regarded the plaintiff as disabled, and the matter should be determined by at trial by a trier of fact.

2. IS THE PLAINTIFF A "QUALIFIED INDIVIDUAL?"

The parties are not in dispute as to the ability of the plaintiff to perform the functions required of her during her employment with the defendant. Both parties agree that she was and is able to perform her job, with the minor exception of being able to travel as often as had been required in the past. There is likewise more than sufficient evidence before the court for a finder of fact to determine that the plaintiff was qualified to

perform the essential functions of her job. The parties differ as to how the plaintiff's ability to work affects this lawsuit. It is the defendant's contention that since the plaintiff is able to perform her job functions, she cannot be "disabled" under the ADA. Inability to "do the job" because of the disability is not a requirement for recovery under the ADA. On the contrary, the ability to perform the essential functions of an employee's job is an absolute prerequisite to the viability of a claim under the ADA. Bradley v. University of Texas M.D. Anderson Cancer Center, 3 F.3d 922, 924 (5th Cir. 1993). Even though reasonable accommodation may be required by the employer in order for the employee to properly perform, it is ultimately the ability to complete the required tasks that is important:

To determine whether an individual is otherwise qualified for a given job, we must conduct a two-part inquiry. First, we must determine whether the individual could perform the essential functions of the job, i.e., functions that bear more than a marginal relationship to the job at issue. Second, if (but only if) we conclude that the individual is not able to perform the essential functions of the job, we must determine whether any reasonable accommodation by the employer would enable him to perform those functions. As with establishing the existence of a handicap, the burden lies with the plaintiff to show that he is otherwise qualified.

Chandler, 2 F.3d at 1393-94; Chiari v. City of League City, 920 F.2d at 311, 317 (5th Cir. 1991). All in all, a "qualified" individual is one who can perform all the requirements of her job **in spite of** her handicap. See Southeastern Community College v. Davis, 442 U.S. 397, 406, 99 S.Ct. 2361, 2367, 60 L.Ed.2d 980

(1979). From the pleadings and other matters submitted, apparently the parties do not dispute the fact that the plaintiff is fully capable of performing the essential functions of her job and was doing so at the time of her termination, in spite of any disability that she might have.

3. HAS THE PLAINTIFF SUFFERED AN ADVERSE EMPLOYMENT ACTION "BECAUSE OF" HER DISABILITY?

The plaintiff must also bring forth sufficient facts so that a reasonable finder of fact could conclude that a discriminatory motive supported the defendant's decision to terminate the plaintiff. It must be remembered that the issue of a party's intent is generally improper for resolution on summary judgment, and direct evidence of intent is seldom available. This court is of the opinion that the plaintiff has presented adequate evidence to prevent a grant of summary judgment in this case. For example, the plaintiff has come forward with evidence of a change in the quality of her work evaluations, with favorable reviews before her injury and ambivalent or unfavorable reviews after. The defendant also contends that the duties of plaintiff's employment position were transferred to that of another employee in Saint Louis, Missouri. However, the plaintiff has presented evidence that her former duties were divided among other employees at the same location where she was employed. Further, the plaintiff has presented evidence that at least one other employee was given another position within the company instead of being terminated,

and that before her injury, the plaintiff had been promised another position within the company. These instances and other facts surrounding this case are sufficient for a reasonable finder of fact to find a discriminatory motive behind the defendant's decision to terminate the plaintiff's employment. The plaintiff has presented a genuine issue of material fact as to the defendant's motivation in terminating her employment, and the matter is inappropriate for resolution on summary judgment grounds.

CONCLUSION

In that the plaintiff has presented sufficient evidence to this court to create genuine issues of material fact concerning her claims, a grant of summary judgment on those claims would be improper at this juncture. The defendant's motion will be denied.

A separate order in accordance with this opinion shall issue this day.

THIS ____ day of December, 1994.

United States District Judge

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DEFENDANT

ORDER DENYING MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby
ORDERED THAT:

1) the defendant's motion for summary judgment is DENIED.

All memoranda, depositions, affidavits and other matters
considered by this court in denying the defendant's motion for
summary judgment are hereby incorporated and made a part of the
record in this cause.

SO ORDERED, this the _____ day of December, 1994.

United States District Judge